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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

In re: ANTHONY T. GEURTS Debtor.	Case No. 18-26732 Chapter 13 Hon. Kevin R. Anderson
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**CHAPTER 13 TRUSTEE'S MOTION TO DISMISS WITH PREJUDICE UNDER 11  
U.S.C. §§ 1307(c) AND 362(d)(4)**

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Lon A. Jenkins, Chapter 13 Trustee, by and through counsel, hereby moves for an order of dismissal with prejudice to prevent future abuse by the Debtor's serial filings. In support thereof, the Trustee represents as follows:

1. The Debtor filed a skeleton petition for relief under Chapter 13 on September 10, 2018. On the same date, the Debtor filed an application to pay filing fee in installments.
2. The Court entered an Order Denying the Application to Pay Filing fee in Installments on September 11, 2018 requiring the entire filing fee be paid by September 24, 2018.
3. The Court entered a Deficiency Notice indicating several required paperwork is to be filed by October 26, 2018.
4. The Debtor and his non-filing spouse have filed twelve, alternating prior

bankruptcy cases in the past three years:

<b>Case No.</b>	<b>Case Title</b>	<b>Chapter</b>	<b>Date Filed</b>	<b>Date Dismissed</b>	<b>Reason for Dismissal</b>
15-22758	Anthony T Geurts	13	3/31/2015	5/4/2015	Failure to pay filing fee
15-27230	Anthony Tomlinson Geurts and Lindsay Lee Wright Geurts	13	8/3/2015	10/14/2015	Failure to pay the initial payment
16-22623	Lindsay Lee Wright Geurts	13	3/31/2016	4/20/2016	Failure to pay filing fee
16-25791	Anthony Tomlinson Geurts	13	7/1/2016	9/12/2016	Failure to pay filing fee
16-29435	Lindsay Lee Wright-Geurts	13	10/24/2016	11/15/2016	Failure to pay filing fee
17-23449	Anthony T Geurts	13	4/24/2017	5/12/2017	Failure to pay filing fee
17-24645	Lindsay Lee Wright-Geurts	13	5/26/2017	6/16/2017	Failure to pay filing fee
17-28374	Anthony T Geurts	13	9/25/2017	10/16/2017	Failure to pay filing fee
18-20706	Lindsay Lee Wright-Geurts	13	2/5/2018	2/28/2018	Failure to pay filing fee
18-21572	Anthony T Geurts	13	3/12/2018	3/30/2018	Failure to pay filing fee
18-25533	Lindsay Lee Wright-Geruts	13	7/30/2018		Pending Motion to Dismiss with Prejudice
18-26732	Anthony T. Geurts	13	9/10/2018		

5. The Debtor and his non-filing spouse have filed paperwork in only one case – 15-27230.

6. No payments have ever been paid to the Trustee despite the 12 case filings.

7. According to Debtor's Schedule D, filed in Case 15-27230 (Docket 8, p. 11), Debtor owed a debt to Bank of America for real property located at 7625 South 2230 West, West Jordan

UT 84084. (Parcel 21284770110000 Legal description: LOT 6, MAGIC VALLEY #1 PUD REVISED).

8. The Debtor and his non-filing spouse list this real property as the address on the petition in every case filed.

9. Pursuant to Debtor's plan filed in Case 15-27230 (Docket 9, p. 3), Debtor owed an arrearage on the real property in the estimated amount of \$46,000.00.

10. Pursuant to the Petition filed in the instant case, Debtor continues to reside at the same address.

11. A proof of claim for Debtor's mortgage has not yet been filed in the instant case.

12. Many of Debtor's and Debtor's non-filing spouses's bankruptcies were filed within days of a scheduled foreclosure sale. *See* Exhibit A.

13. The Trustee is prosecuting a Motion to Dismiss with Prejudice in the non-filing spouse's separate case (18-25533) with a hearing scheduled for October 3, 2018.

### **MEMORANDUM**

The purpose of § 109(g) is to “balance the scales more fairly by providing the courts with greater authority to control abusive multiple filings by individual debtors.”<sup>1</sup> To dismiss a case with prejudice under § 109(g), the movant must show (1) the Debtor failed to abide by an order of the court or failed to appear before the court in proper prosecution of the case, and (2) that such failure was willful. The term “willful” in the § 109(g) context means intentional, knowing and deliberate behavior.<sup>2</sup> Conduct is “willful” within the meaning of § 109(g) when the Debtor has

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<sup>1</sup> *In re Fulton*, 52 B.R. 627, 630 (Bankr. D. Utah 1985) (citations omitted).

<sup>2</sup> *Id.* at 633.

notice of the responsibility to act, and the Debtor intentionally engaged in conduct that resulted in a failure to fulfill that responsibility.<sup>3</sup> Courts may review the Debtor's conduct in prior bankruptcies to determine whether the totality of the circumstances results in "willful failure" as repeated conduct can give rise to the court inferring that the Debtor's actions were deliberate.<sup>4</sup> The term "appear" is more than a physical presence at a hearing at court and "includes, among other things, being represented at non-court hearings related to a case or filing papers in the case."<sup>5</sup> The code does not define "proper prosecution of a case", but logically includes "compliance with various statutory duties the Debtor must perform including those outlined in §§ 341, 521, 1304, 1321, 1322, 1326, the Federal Rules of Civil and Bankruptcy Procedures and this Court's Local Rules."<sup>6</sup>

The Trustee moves to dismiss the case under § 109(g) with a 180-day lockout against subsequent filings by the Debtor. The timing of the repeat filings of the Debtor and his non-filing spouse show that they are using Bankruptcy relief as a means to stall collection actions rather than as a means to reorganize. The Debtor has not even complied with the basic filing requirements in either of his cases and therefore she has willfully failed to properly prosecute his cases.

Section 105 gives Bankruptcy Courts broad equitable powers to issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code or prevent an abuse of process,<sup>7</sup> and to specifically address instances of bad-faith, serial filings

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<sup>3</sup> In re Tilson, Ch 13 Case No. 03-22735, Order Dismissing Case (docket 18) entered June 10, 2003. (<http://www.utb.uscourts.gov/localOpinions/opinions/437opin.pdf>)

<sup>4</sup> Fulton at 634.

<sup>5</sup> In re Sink, Ch 13 Case No. 02-40042, Memorandum Decision and Order Granting Motion to Dismiss Case with Prejudice (docket 20) entered February 28, 2003. (<http://www.utb.uscourts.gov/localOpinions/opinions/434opin.pdf>)

<sup>6</sup> Id.

<sup>7</sup> Marrama v. Citizen Bank of Massachusetts, 549 U.S. 365 (2007).

(see *United States v. Boulware*, 604 F.3d 832 (4th Cir. 2010); *Dempsey v. Carter*, No. 07-1042, 2007 WL 2478674 (7th Cir. 2007) (unpublished); *In re Ellsworth*, 455 B.R. 904, 921-22 (B.A.P. 9th Cir. 2011); *In re Cusano*, 431 B.R. 726, 735-37 (B.A.P. 6th Cir. 2010); *In re Marshall*, 407 B.R. 359, 363 (B.A.P. 8th Cir. 2009); and *In re Gonzalez-Ruiz*, 341 B.R. 371, 386 (B.A.P. 1st Cir. 2006)).

The Trustee requests the Court dismiss the case with *in rem* prejudice and that no bankruptcy can be filed on the real property at 7625 South 2230 West, West Jordan UT 84084 (Parcel 21284770110000 Legal description: LOT 6, MAGIC VALLEY #1 PUD REVISED) for period of no less than two years. Section 362(d)(4) provides for *in rem* relief if the Court finds the filing of a petition was part of scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings on such real property. Although § 362(d)(4) is usually requested by the creditor, based on the Court's powers under § 105(a) it could be awarded when requested by the Trustee or *sua sponte* by the Court. (See Modica v. Ozone Park Funding Associates, 442 B.R. 189 (E.D.N.Y. 2010)(bankruptcy court can limit effect of automatic stay in future cases with respect to a debt or property that had already been subject to bankruptcy jurisdiction).

*In rem* relief against the Property under §105(a) is warranted because the Debtor has abused the bankruptcy process. In this case, the Debtor and his non-filing spouse have engaged in multiple filings on the real property that is in line with a scheme to, at a minimum, delay or hinder creditors. This is clearly shown by the fact that many of the bankruptcies were filed within days of a scheduled foreclosure sale. Thus it appears relief under § 362(d)(4) is warranted.

WHEREFORE, the Trustee requests that the Court dismiss the case with prejudice with a 180 day bar to refiling for the Debtor, and a 2 year bar to refiling on the property located at 7625

South 2230 West, West Jordan UT 84084 (Parcel 21284770110000 Legal description: LOT 6, MAGIC VALLEY #1 PUD REVISED).

DATED: September 14, 2018.

/s/ Tami Gadd-Willardson  
TAMI GADD-WILLARDSON  
Attorney for Chapter 13 Trustee

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing paper was served on the following on September 14, 2018.

ANTHONY T. GEURTS  
7625 SOUTH 2230 WEST  
WEST JORDAN UT 84084

/s/ Michelle Moses  
Office of the Chapter 13 Trustee

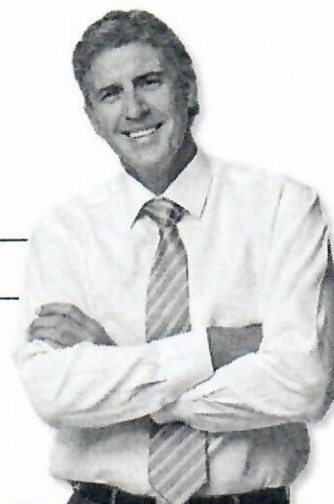
# EXHIBIT A

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NOTICE OF TRUSTEE'S SALE T.S.# 015674-UT Loan # \*\*\*2205 A.P.N.: 21-28-477-011 IMPORTANT NOTICE TO PROPERTY OWNER The following described property will be sold at public auction to the highest bidder payable in lawful money of the United States at INSIDE THE ROTUNDA AT THE EAST MAIN ENTRANCE OF THE SCOTT M. MATHESON COURTHOUSE, 450 S. STATE STREET, SALT LAKE CITY, UT 84111 on 7/5/2016 at 9:00 AM of said day, for the purpose of foreclosing a Trust Deed dated 9/24/1999 and executed by ANTHONY GEURTS, AN UNMARRIED MAN, AND LINDSAY WRIGHT, AN UNMARRIED WOMAN, AS JOINT TENANTS as trustees, in favor of SECURITY NATIONAL MORTGAGE COMPANY, A UTAH CORPORATION, recorded on 9/27/1999, as Instrument No. 7475709, in Book 8311, Page 8978, covering the following real property located in Salt Lake and more particularly described as follows: LOT 6, MAGIC VALLEY NO. 1 REVISED, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SALT LAKE COUNTY, UTAH. A.P.N.: 21-28-477-011 The current beneficiary of the trust deed is EVERBANK and the record owner(s) of the property as of the recording of the notice of default is/are ANTHONY GEURTS and LINDSAY WRIGHT. The street address of the property is purported to be 7625 SOUTH 2230 WEST, WEST JORDAN, UT 84084. The undersigned disclaims liability for any error in the address. Bidders must be prepared to tender to the trustee \$20,000.00 at the sale and the balance of the purchase price by 12:00 noon the day following the sale. Both payments must be in the form of a cashier's check or certified funds. "Official" checks and cash are not acceptable. TRUSTEE CONTACT INFORMATION: ORANGE TITLE INSURANCE AGENCY, INC. 374 East 720 South Orem, Utah 84058 Phone: (801) 285-0964 866-931-0036 Hours: Monday-Friday 9a.m.-5p.m. Dated: 5/24/16 ORANGE TITLE INSURANCE AGENCY, INC. 1093675 UPAXLP

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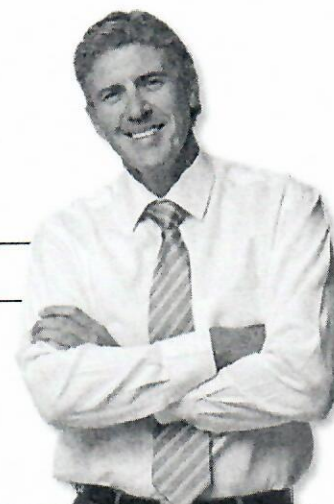
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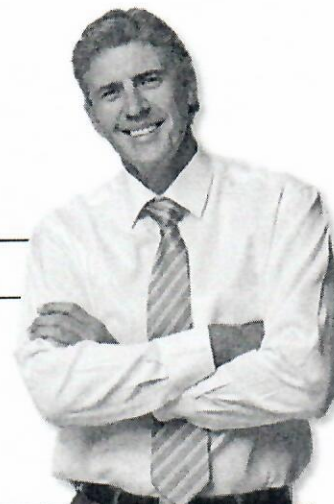


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### TRUSTEE'S SALE

NOTICE OF  
TRUSTEE'S SALE  
T.S.# 015674-UT  
Loan # \*\*\*2205

A.P.N.: 21-28-477-011-0000

IMPORTANT NOTICE TO PROPERTY OWNER The following described property will be sold at public auction to the highest bidder payable in lawful money of the United States at INSIDE THE ROTUNDA AT THE EAST MAIN ENTRANCE OF THE SCOTT M. MATHESON COURTHOUSE, 450 S. STATE STREET, SALT LAKE CITY, UT 84111 on 9/26/2017 at 9:00 AM of said day, for the purpose of foreclosing a Trust Deed dated 9/24/1999 and executed by ANTHONY GEURTS, AN UNMARRIED MAN, AND LINDSAY WRIGHT, AN UNMARRIED WOMAN, AS JOINT TENANTS as trustors, in favor of SECURITY NATIONAL MORTGAGE COMPANY, A UTAH CORPORATION, recorded on 9/27/1999, as Instrument No. 7475709, in Book 8311, Page 8978, covering the following real property located in Salt Lake County, Utah and more particularly described as follows: LOT 6, MAGIC VALLEY NO. 1 REVISED, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SALT LAKE COUNTY, UTAH. A.P.N.: 21-28-477-011-0000 The current beneficiary of the trust deed is EVERBANK and the record owner(s) of the property as of the recording of the notice of default is/are ANTHONY GEURTS and LINDSAY WRIGHT. The street address of the property is purported to be 7625 SOUTH 2230 WEST, WEST JORDAN, UT 84084. The undersigned disclaims liability for any error in the address. Bidders must be prepared to tender to the trustee \$20,000.00 at the sale and the balance of the purchase price by 12:00 noon the day following the sale. Both payments must be in the form of a cashier's check or certified funds. "Official" checks and cash are not acceptable. TRUSTEE CONTACT INFORMATION: ORANGE TITLE INSURANCE AGENCY, INC. 374 East 720 South Orem, Utah 84058 Phone: (800) 500-8757 Fax: (801) 285-0964 Hours: Monday-Friday 9a.m.-5p.m. Dated: 7-21-2017 ORANGE TITLE INSURANCE AGENCY, INC. Brett Sorensen, Authorized Agent  
Date of first publication August 25, 2017 - 9-8-2017  
(9/30/17)

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T.S.# 015674-UT

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NOTICE OF

TRUSTEE'S SALE

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an attempt to foreclose a security instrument and any information obtained will be used for that purpose. Dated: 6/14/2018 ORANGE TITLE INSURANCE AGENCY, INC.

Date of first publication June 29, 2018 – 07-13-2018

(08/03/18)

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